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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 154

MICHAEL J. CRYNE,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR REHEARING

ARCHIBALD PALMER,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 154

MICHAEL J. CRYNE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR REHEARING

To the Honorable Chief Justice and Associate Justices for the Supreme Court of the United States:

The petition of Archibald Palmer respectfully shows to this Court and alleges:

First. That your petitioner is attorney for Michael J. Cryne, the petitioner herein.

Second. That heretofore and on the 8th day of October, 1945 this Court denied a petition for a writ of certiorari herein.

Third. That the Government, in its brief, conceded that the record does not fully reveal the basis upon which the police acted in making the arrests, since no inquiry was made into that subject at the trial.

Fourth. That the Government's brief refers only to the following words of the Circuit Court of Appeals (R. 267-268):

> "* * * the policemen were not asked what was the information they had received at the 'Precinct.' Had that been done, it might have appeared that they did not have enough to go on; but, as the record stands, it is proper to infer that what they there heard related to the unlawful use of the building for the making or storing of alcohol, else they would not have tried to make contact with Brady as they did. The information which we infer they then got, coupled with the observed conduct of Meierdiercks and Cryne, gave them 'reasonable cause' to make the arrest. It is true that there was nothing suspicious in the fact that these two entered a car outside the building, or that they returned after the policemen came back; but what then occurred was ample confirmation of the information which they already had. It will be remembered that the two suspects then appeared to the policemen to 'look us over' and almost at once turned about and made off at such a burst of speed, as could have left no doubt in any reasonable mind that they were trying to escape arrest, and that they feared to be connected with what might be found in the building."

Fifth. That this whole line of argument is contrary to our principles of criminal law.

Sixth. That the Government had to prove the petitioner's guilt beyond a reasonable doubt and it was therefore the Government's duty to ask the policemen what was the information that they had received in the precinct.

Seventh. That if that had been done it might have appeared that they did not have enough to go on.

Eighth. That the decision of the Circuit Court of Appeals is contrary to the decision of this Court in *Scher* v. *United*

States, 305 U. S. 251, in which the conviction of the defendant was reversed on the ground that the Trial Court had ruled out some questions designed to learn the sources of the information on which the officers had acted.

Ninth. That there is no distinction between the *Scher* case, *supra,* and the instant case, since it was the duty of the Government, in order to establish the lawfulness of the arrest, to ask the officers as to the sources of the information.

Tenth. On the other hand, the Government in its brief stated that the case of *Wood* v. *United States,* 128 Fed. (2d) 265, does not aid petitioner upon the ground that said decision was expressly concerned with judicial admissions and distinguished from non-judicial admissions.

Eleventh. The Government, in attempting to make a distinction between non-judicial admissions and judicial admissions, refers to the cases of *Wilson* v. *United States,* 162 U. S. 613, and *Powers* v. *United States,* 223 U. S. 303, 313.

Twelfth. A careful analysis of the *Wilson* and *Powers* cases, *supra,* shows that the judicial or non-judicial character of the admission is only one of the elements to be considered in connection with the question whether a person under arrest has to be advised of his constitutional rights.

Thirteenth: The Circuit Court of Appeals seems to be of the opinion that in a case of a "casual" inquiry it may be commendable to caution an accused but it is not necessary where the answer is voluntary.

Fourteenth. Petitioner is of the opinion that it is absolutely necessary, in order to fully protect the constitutional rights of an accused, to caution him of such rights in a

casual inquiry for the reason that in such casual inquiry an accused is taken off-guard and does not fully realize the importance of his answers and, under such circumstances, what seems to be a voluntary answer may in fact be an involuntary answer.

Fifteenth. Your petitioner therefore asks for a rehearing so that this question, which has not yet been decided, may be passed upon by this Court.

WHEREFORE, your petitioner respectfully prays that this Honorable Court grant a rehearing of the writ of certiorari, and upon such rehearing grant the said application.

ARCHIBALD PALMER.

Dated, New York, November 1st, 1945.

CITY OF NEW YORK,
County of New York,
State of New York, ss:

Archibald Palmer, being duly sworn, deposes and says that he is the petitioner named herein; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

ARCHIBALD PALMER.

Sworn to before me this 1st day of November, 1945.

DOROTHY J. RESNIKOF,
[SEAL.] *Notary Public, Kings County.*

Kings Co. Clk's #510, Reg. #145-R-7. N. Y. Co. Clk's #517, Reg. #351-R-7. Commission expires March 30, 1947.

Certificate of Counsel

I, Archibald Palmer, counsel to Michael J. Cryne, petitioner named in the petition for rehearing, hereby certify that the petition on behalf of Michael J. Cryne for a rehearing of the application for a writ of certiorari is presented in good faith and not for the purposes of delay.

ARCHIBALD PALMER.

Dated New York, November 1st, 1945.